

**REMARKS**

The present Amendment is in response to the Office Action mailed May 7, 2007. Claims 1, 3, 5 and 16 have been amended, claims 2 and 13-15 have been previously cancelled, and claim 18 is new. Therefore, Claims 1, 3-12, and 16-18 are pending in the present application. Because of the finality of the Office Action, the present Amendment is being submitted in connection with a Request for Continued Examination ("RCE"). Applicants respectfully submit that the finality of the Action should be removed in light of this submission of the RCE. The following sets forth Applicants' remarks relating to the currently pending claims and the outstanding Action.

In the Office Action, the Examiner first rejected claims 3-6 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. At least claims 3 and 5 have been amended above to correct the deficiencies noted by the Examiner. Specifically, claim 3 has been amended to clearly require that the elongate section be substantially perpendicular to the base, and claim 5 has been amended to refer to the forked shaped extensions instead of a "u-shaped member." Applicants respectfully submit that these amendments overcome the § 112 rejections, and respectfully request removal of same.

Further in the Office Action, the Examiner rejected claims 1, 3-5, 8-10, and 16 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,261,296 to Aebi et al. ("Aebi"), claims 6 and 7 under 35 U.S.C. § 103(a) as being obvious over the combination of Aebi and EP Patent No. 1,219,266 to Neumann ("Neumann"), claim 11 under 35 U.S.C. 103(a) as being obvious over the combination of Aebi and DE 3023942 to Keller ("Keller"), claim 12 under 35 U.S.C. § 103(a) as being obvious over the combination of Aebi and U.S. Patent No. 6,080,155 to

Michelson ("Michelson"), and claim 17 under 35 U.S.C. § 103(a) as being obvious over the combination of Aebi and U.S. Patent No. 5,401,269 to Buttner-Janz et al. ("Buttner-Janz"). In short, the Examiner stated in the Official Action that it was his belief that each and every one of the currently pending claims is either anticipated or obviated by the prior art cited. Most importantly, the Examiner rejected independent claims 1 and 16 as being fully anticipated by Aebi. In light of the above made amendments of the currently pending claims Applicants respectfully submit that such claims, as amended, overcome the rejections set forth by the Examiner.

Applicants respectfully point out that the distal ends of the instrument taught in Aebi distract much like the distal ends of a standard scissor device. In fact, Aebi states "it would be appreciated that distractor mechanism 230 of distractor 200 may be a simple scissors configuration with handles 212 and jaws 214 formed along the same lever element, as may be appreciated with reference to FIGS. 12 and 14. However, distractor mechanism 230 may instead have substantially the same configuration as distractor mechanism 30 of distractor 10 or distractor mechanism 130 of distractor 100." See column 9, lines 42-49 of Aebi. Further, Aebi discloses that distractor mechanism 30 is in the form of a double scissor configuration, wherein handles 12 and jaws 14 are provided on separate level arms which are pivotably coupled together. The double acting configuration breaks the pivoting action into two components, reducing the total movement of the distractor mechanism 30 required along distraction axis 16. See column 4, lines 45-58 and column 5, lines 15-18.

In contrast, the distal ends of the distractor of the present invention remain parallel to one another during distraction. FIGS. 10 and 11 of the present application clearly show a mechanism that allows such distraction to occur.

Independent claims 1 and 16 have been amended accordingly. Specifically, such claims have been amended to include the limitation "wherein actuation of said plying device causes said two opposing fork-shaped extensions to move between an open position and a closed position, said opposing fork-shaped extensions are in parallel planes in said open and closed positions." In other words, the fork-shaped extensions remain in parallel planes throughout opening and closing of the device. This is different from that which is disclosed in Aebi, and as such Applicants respectfully submit that independent claims 1 and 16 are not anticipated by the Aebi reference.

Furthermore, Applicants have added new independent claim 18 which more specifically claims another patentable difference between the device of the present invention and that taught in Aebi. Specifically, the Examiner noted in the Office Action that one set of the tines of the device in Aebi is longitudinally aligned with the elongate section. In independent claim 18, Applicants have claimed what is shown in FIGS. 10 and 11 of the present case, a plying device where both fork-shaped extensions are off-set from the actuation handle and intermediate portion. Specifically, new independent claim 18 requires first longitudinal axis extending through a center of the actuation handle toward the intermediate portion, a second longitudinal axis parallel to and centered between the first and second tines of the first fork-shaped extension, and a third longitudinal axis parallel to and centered between the third and fourth tines of the second fork-shaped extension. The claim further requires that the second and third longitudinal axis be offset and parallel to the first longitudinal axis. As was discussed in the previous Amendment submitted in the matter, this provides for a greater visibility of the intervertebral disc space when utilizing the device. Aebi simply does not

provide a construction where both sets of tines are offset from the actuation handle and intermediate portion thereof.

In light of the above, Applicants respectfully submit that independent claims 1, 16, and 18 constitute allowable subject matter. Although each of the remaining dependent claims have not been discussed specifically herein, Applicants also respectfully submit that such constitute allowable subject matter based upon their dependence from one of independent claims 1 or 16. A dependent claim is necessarily narrower than an independent claim from which it properly depends. Therefore, Applicants respectfully request allowance of each and every one of the currently pending claims.

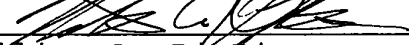
As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' agent at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: October 30, 2007

Respectfully submitted,

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